

IN THE COURT OF APPEALS OF TENNESSEE
AT NASHVILLE
April 14, 2005 Session

BRADLEY LEWIS SLATON v. JANNA LYNN SLATON RAY

Appeal from the Chancery Court for Bedford County
No. 23,523 J. B. Cox, Chancellor

No. M2004-01809-COA-R3-CV - Filed October 24, 2005

The father and primary residential parent of the parties' two minor children appeals the denial of his request to relocate to Florida with the children. His stated reason is a better job opportunity with increased pay of seventy-five cents per hour. The children's mother opposes the move. The trial court determined the father spent substantially more time with the children, analyzed the case pursuant to Tenn. Code. Ann. § 36-6-108(d), and concluded there was no reasonable purpose for the move and the move was not in the best interest of the children. Thus, it denied the father's request and he appealed. We have concluded the evidence does not preponderate against the trial court's findings and, thus, we affirm.

Tenn. R. App. P. 3 Appeal as of Right; Judgment of the Chancery Court Affirmed

FRANK G. CLEMENT, JR., J., delivered the opinion of the court, in which PATRICIA J. COTTRELL, J., and DONALD P. HARRIS, SR. J., joined.

E. Evan Cope, Murfreesboro, Tennessee, for the appellant, Bradley Lewis Slaton.

Richard L. Dugger, Shelbyville, Tennessee, for the appellee, Janna Lynn Slaton Ray.

OPINION

The nine year union of Bradley Lewis Slaton (Father) and Janna Lynn Slaton Ray (Mother) produced two children following which the parties divorced in March of 2001. Pursuant to the 2001 divorce decree, Father was designated as the primary custodian of the children and the parties shared joint custody of their two minor children.

Two years later, in August of 2003, Father was offered a job with his brother-in-law in Winter Springs, Florida. Pursuant to Tenn. Code Ann. § 36-6-108(a), Father served Mother with notice of his intent to relocate to Florida with the children based on a better employment opportunity. The children were eleven and seven years old at the time. Mother filed a petition in opposition to the proposed relocation.

A contested evidentiary hearing was conducted following which the trial court found Father spent substantially more time with the children and proceeded to examine the issue pursuant to the criteria in Tenn. Code Ann. § 36-6-108(d). The statute provides that if the parent spending the greater amount of time with the child is the one seeking to relocate, then relocation shall be permitted unless one or more of three factors are found:

- (1) The relocation does not have a reasonable purpose;
- (2) The relocation would pose a threat of specific and serious harm to the child which outweighs the threat of harm to the child of a change in custody; or
- (3) The parent's motive for relocating with the child is vindictive in that it is intended to defeat or deter visitation rights of the non-custodial parent or the parent spending less time with the child.

Tenn. Code Ann. § 36-6-108(d)(1)-(3).¹

After considering the evidence, most of which was hotly controverted, the trial court ruled in favor of the Father on the last two factors, determining the move did not pose serious harm to the children and the Father's motive for the move was not vindictive; however, the trial court ruled against Father on the remaining factor, concluding that Father's stated purpose for relocating was not a reasonable purpose. The trial court conducted the additional examination pursuant to subsection (d) and found the relocation was not in the best interest of the children. *See* Tenn. Code Ann. § 36-6-108(d). Based upon these findings, the trial court denied Father's requested relocation to Florida, following which Father perfected this appeal.

The standard of review of a trial court's findings of fact is *de novo* and we presume that the findings of fact are correct unless the preponderance of the evidence is otherwise. Tenn. R. App. P. 13(d); *Rawlings v. John Hancock Mut. Life Ins. Co.*, 78 S.W.3d 291, 296 (Tenn. Ct. App. 2001). For the evidence to preponderate against a trial court's finding of fact, it must support another finding of fact with greater convincing effect. *Walker v. Sidney Gilreath & Assocs.*, 40 S.W.3d 66, 71 (Tenn. Ct. App. 2000); *The Realty Shop, Inc. v. R.R. Westminster Holding, Inc.*, 7 S.W.3d 581, 596 (Tenn. Ct. App. 1999). Unless there is an error of law, we must affirm the trial court's decision as long as the evidence does not preponderate against the findings. *Umstot v. Umstot*, 968 S.W.2d 819, 821 (Tenn. Ct. App. 1997). We also give great weight to a trial court's determinations of credibility of witnesses. *Estate of Walton v. Young*, 950 S.W.2d 956, 959 (Tenn. 1997); *B & G Constr., Inc. v. Polk*, 37 S.W.3d 462, 465 (Tenn. Ct. App. 2000). Where the trial court does not make findings of fact, there is no presumption of correctness and we "must conduct our own independent review of the record to determine where the preponderance of the evidence lies." *Brooks v. Brooks*, 992 S.W.2d 403, 405 (Tenn. 1999). Issues of law are reviewed *de novo* with no presumption of correctness. *Nelson v. Wal-Mart Stores, Inc.*, 8 S.W.3d 625, 628 (Tenn. 1999).

¹The statute further provides that if the trial court finds one or more of the grounds designated in subsection (d), the court shall determine whether or not to permit relocation of the child based on the best interest of the child. Tenn. Code Ann. § 36-6-108(e).

Father testified that his brother-in-law, who owned Clifton Tower Service, had offered to employ him as a mechanic for which he would be paid at the hourly rate of \$16.00 per hour. Father explained this compensation would be seventy-five cents more per hour than he was making at his current job, which was substantially the same type of work.² Father also testified that the new job afforded him the possibility of career advancement, which, he contended, was not available in his current job. However, Father provided no evidence, other than his own testimony, to support this contention. Moreover, Father was unable to adequately explain, in response to a vigorous cross examination, how the modest increase in pay could justify the expense of relocating himself and the parties' two children, as well as his new wife and her two children.³

Father's reasonable purpose argument is based on two factors. One, he contends the offer of employment with a pay increase constitutes a reasonable purpose for the relocation. Two, he contends the prospect that his new job may afford him a better opportunity for career advancement also constitutes a reasonable purpose.

Father is in essence proposing that we adopt a "bright-line" rule that any increase in compensation constitutes a reasonable purpose for the proposed relocation. He has, however, failed to convince us to adopt such a rule. This court has declined to adopt "bright line" rules in a variety of domestic scenarios. *See Robinson v. Robinson*, No. M2003-02289-COA-R3-CV 2005 WL 1541861, at *4 (Tenn. Ct. App. June 30, 2005) (rejecting a father's proposal that parenting time be based upon an "hourly log" he maintained); *Taylor v. Taylor*, 849 S.W.2d 319, 327 (Tenn. 1993) (holding there are no bright-line rules for determining when a change of circumstances will be deemed material enough to warrant changing an existing custody arrangement); *Butterworth v. Butterworth*, 154 S.W.3d 79, at 81 (Tenn. 2005) (rejecting a bright-line exception to the doctrine of parental immunity for negligence involving employment-related activities without examining the circumstances under which those activities were conducted). This is largely due to the recognition that domestic issues are complex and fact intensive, requiring a thorough examination of the individual circumstances rather than a perfunctory review based on so-called "bright line" rules.

An increase in pay is a factor to be considered when determining whether there is a reasonable purpose for the proposed relocation; however, that factor, without more, may be insufficient. Moreover, an increase in pay is but one of several economic factors that should be considered. Other relevant economic factors that are typically considered include, without limitation, the relative significance of the increase, the cost of living in the proposed location compared to the

²The company Father intends to work for in Florida installs satellite towers for cell phones. Father would be employed in fleet maintenance for the vehicles and equipment in association with Clifton Tower Service. Father is currently employed at Cloud Concrete as a mechanic for the company's vehicles and equipment.

³Father's new wife was also embroiled in a custody dispute with the father of one of her children, and her testimony revealed that she strongly opposed returning to Florida. The trial court found it most troubling that Father's new wife testified that she "would rather be anywhere than back in Florida with the father of that child regardless of what the court order says down there."

present location, the firmness of the job offer, opportunity for career advancement and economic betterment of the family unit. *See Mitchell v. Mitchell*, No. M2004-00849-COA-R3-CV, 2005 WL 1521850, at *3 (Tenn. Ct. App. June 27, 2005); *O'Bannon v. O'Bannon*, No. E2002-02553-COA-R3-CV, 2003 WL 22734673, at *2 (Tenn. Ct. App. Nov. 20, 2003). Thus, the mere fact Father has been offered a seventy-five cent per hour raise is not, by itself, sufficient for us to determine that the proposed relocation is for a reasonable purpose.

The other significant factor Father relies on is his belief the new job will afford him a better opportunity for career advancement. We, too, find this evidence significant but for another reason; Father's testimony regarding the potential for career advancement is wholly unsubstantiated and subjective. The evidence on this point is nothing more than Father's belief and hope of future advancement, which is inadequate. Relocation because of "a better job opportunity, greater salary, and career advancement opportunities, establishes a 'reasonable purpose' within the meaning of the statute, but mere belief and hope that career advancement will occur is not sufficient to establish a reasonable purpose for relocation." *O'Bannon*, 2003 WL 22734673, at *2.

The trial court also found the proposed relocation was not in the children's best interest and, therefore, denied Father's request to relocate with the children to Florida. Father does not address the trial court's ruling as to the children's best interest on appeal. Therefore, it is not necessary for us to analyze the trial court's finding as to best interest and that ruling shall not be disturbed.

Considering the entire record, we have concluded the evidence does not preponderate against the trial court's finding that Father does not have a reasonable purpose to relocate with the parties' minor children to Florida. Therefore, the judgment of the trial court denying Father's request to relocate with the children to Florida is affirmed in all respects and this matter is remanded with costs of appeal assessed against appellant, Bradley Lewis Slaton.

FRANK G. CLEMENT, JR., JUDGE